

PATENT
09/801,614

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
In re application of: : Group Art Unit: 2143
Gerald F. McBrearty et al. : Examiner J. B. Dennison
Serial No: 09/801,614 : Confirmation No. 5324
Filed: 03/08/2001 :
Title: PROTECTING CONTENTS :
OF COMPUTER DATA FILES FROM :
SUSPECTED INTRUDERS BY :
PROGRAMMED FILE DESTRUCTION : Customer No. 32,329
Date: Oct. 14, 2008 :
:

REPLY BRIEF ON APPEAL

Commissioner for Patents
P.O.Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Reply Brief to the Examiner's Answer mailed
August 11, 2008.

In the Answer, the Examiner makes some newer statements
with respect to Appellants' Argument in the Brief which
Appellant takes issue with.

On pages 9-12 of the Answer, Examiner elaborates on his
arguments that Winburn (US2002/0069363) specifically teaches
the claimed element (common to all claims):

"....determining, without accessing any of said
backup files, whether said user requests are unauthorized
intrusions into said requested data files;"

Examiner argues that Winburn does not access the backup files in making this determination. Winburn reads an attribute of his backup file and creates a specific backup identifier for the backup file based upon this attribute. Then, when there is a suspicious file, Winburn creates a test identifier for the suspicious file based on the same attribute, and then compares the test identifier with the backup identifier to determine the validity of the suspicious file. It is the contention of Examiner that when Winburn then compares the backup file identifier with the suspicious file identifier, this comparison is without access to the backup file since only the backup file identifier is being compared to determine the validity of the suspicious file.

Applicants take issue with this argument. The backup file in Winburn must be accessed to access the attribute which is identified by the backup file identifier. Thus, when this backup file identifier is compared to the test identifier based on the attribute of the suspect file in Winburn to determine whether there has been an unauthorized intrusion, the backup has already been accessed to provide the backup file identifier.

The Reference: The Waite Group's Windows 98 How-To, Keith A. Powell, 1999.

Examiner, in his Answer, newly cites the above reference for teaching that it is known in the art to access attributes of files without accessing the files themselves. Applicants submit that Examiner by citing this Windows 98

reference is trying to modify the teaching of anticipatory reference in a 35 USC 102 rejection with another reference purporting to disclose what Examiner contends is known in the art.

Applicants submit that an anticipatory reference on which a 35 USC 102 rejection is based must disclose every element of the claimed invention without modification. By referring to the teachings of this Windows 98 reference, the Examiner is attempting to modify the disclosure of the basic Winburn reference.

Accordingly, Applicants submit that the teachings of the Windows 98 reference can not be looked to in order to modify the teaching of the Winburn.

Thus, for the reasons set forth above and for the reasons set forth in the Brief on Appeal, Winburn fails to disclose each element of the present claimed invention without modification. It is submitted that Winburn is not an anticipatory reference under 35 USC 102.

The Board of Appeals is respectfully requested to reverse the Final Rejection under 35 USC 102(e), and find claims 1, 4, 5, 7, 10, 13, 14, 17, 20, and 31-35 in condition for allowance.

Respectfully submitted,

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